United Nations CAT/C/ARG/CO/5-6/Add.1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
7 June 2018
English
Original: Spanish
English and Spanish only

Committee against Torture
Sixty-fourth session
23 July–10 August 2018
Item 3 of the provisional agenda
Submission of reports by States parties under article 19 of the Convention

Concluding observations on the combined fifth and sixth periodic reports of Argentina

Addendum

Information received from Argentina on follow-up to concluding observations*

[Date received: 11 May 2018]

* The present document is being issued without formal editing.

GE.18-09287 (E)
1809287

Please recycle

Follow-up to the recommendations made by the Committee against Torture in its concluding observations on the combined fifth and sixth periodic reports of Argentina (CAT/C/ARG/5-6)

Paragraph 14 (a) Investigate promptly, thoroughly and impartially all claims of murder, arbitrary detention, torture, harassment and police abuse and ensure that the alleged perpetrators and their superiors who knew, or should have known, that these acts were being committed are prosecuted and, if convicted, punished commensurately with the seriousness of their acts. The State should, in particular, ensure that genuine and impartial judicial proceedings are conducted in connection with the acts of torture inflicted on Ezequiel Villanueva and Iván Navarro

Investigate claims and ensure the prosecution of those responsible

1. Pursuant to article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government of Argentina submitted to the Committee against Torture its combined fifth and sixth periodic reports,[1] which are available on the Committee web page and which provide general information, with reference to articles 12 and 13 of the Convention (torture and ill-treatment in detention facilities), about the adoption of internal regulations and procedural protocols within criminal justice institutions.

2. On 9 May 2017, after its oral presentation to the Committee, the Government submitted a document containing supplementary information,[2] including data on the mechanisms for receiving and investigating complaints within the prison system.

3. That document also provided the information that the Federal Prison Service carries out summary investigations to determine the administrative responsibilities of staff and to institute criminal proceedings in the event of an offence, and that it manages two hotlines for the reporting of complaints:

(1) A complaint hotline (0800-222-7738) operated by the Internal Affairs Division of the Federal Prison Service in accordance with an approved protocol for the processing of complaints;

(2) A complaint hotline (0800-444-3310), operated by the Human Rights Promotion Service of the Federal Prison Service, which receives complaints concerning issues related to the human rights of persons deprived of their liberty.

4. It was reported that, in order to better combat impunity, the Internal Affairs Division had been restructured, creating the Corruption Prevention Service and the Violence Reduction Service.

5. It was also reported that a body of lawyers had been established to shed light on events that occurred within the jurisdiction of the Federal Prison Service by conducting summary investigations and administrative inquiries.

6. In addition to the information already provided, the Government wishes to report that the Ministry of Security — which is responsible for matters of internal security and the preservation of the life, liberty and property of citizens — is committed to carrying out reforms to improve integrity and transparency among law enforcement officers and in institutions through the implementation of public policies on prevention and oversight.

7. As part of that commitment, the Corruption Prevention and Integrity Testing Directorate was created pursuant to Administrative Decision No. 299/2018. Its functions include helping to evaluate the transparency, ethics, integrity and professionalism of the police and security personnel employed by the Ministry of Security, in the context of promotion, discharge, dismissal and retirement processes.

[1] CAT/C/ARG/5-6. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/005/20/PDF/G1600520.pdf?OpenElement.

[2] Supplementary report INT/CAT/AIS/ARG/27434/S. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCAT%2fAIS%2fARG%2f27434&Lang=en.

8. Decision No. 984/2017 establishes that the Ministry of Security may intervene in the internal inquiries of the federal police and security forces in cases of institutional violence or gender-based violence — whether committed against the members of those forces or other persons — and in cases of serious corruption, alleged involvement in or concealment of illicit trafficking of narcotic drugs, human trafficking, kidnapping, terrorism and organized crime, among others.

9. Furthermore, on 15 March 2018 the Government of Argentina submitted an addendum to the Office of the United Nations High Commissioner for Human Rights setting out its position on the 188 recommendations that it had received during the third cycle of the universal periodic review.[3]

10. In that document, the Government accepted all recommendations concerning the duty to investigate complaints of abuse of police authority and to prosecute the perpetrators.

11. The Government also reported that the Ministry of Security has a channel through which complaints can be submitted confidentially, securely, transparently and free of charge, and which operates 24 hours a day, 365 days a year. Complaints are forwarded to the ministry or ministries concerned, which investigate each grievance they receive in regard to matters that fall within their jurisdiction.

12. It is therefore clear that the Government is planning and implementing the measures needed to enhance the transparency and professionalism of police and security forces, in accordance with the protocols and internal regulations of the police and security forces and national and international standards in this area.

Judicial proceedings in connection with the acts of torture inflicted on Ezequiel Villanueva and Iván Navarro

13. The aforementioned supplementary information submitted to the Committee contained the information available on the Villanueva and Navarro case as of May 2017.

14. A complaint of acts of torture inflicted on Iván Navarro and Ezequiel Villanueva by members of the Argentine Naval Prefecture was filed on 24 September 2016.

15. The Secretary for Human Rights condemned the actions of the members of the Prefecture and, in the days that followed, offered the family the institutional support of the National Programme Against Impunity and the Dr. Fernando Ulloa Centre for Victims of Human Rights Violations.

16. In that legal framework, the Directorate for Monitoring the Causes of Institutional Violence and Crimes of Federal Interest of the Ministry of Security examined Case No. 59796/16, entitled *Navarro, Iván y Villanueva Moya, Ezequiel, La Garganta Poderosa c/ 7 prefectos s/apremios ilegales y torturas* ("*Navarro, Iván and Villanueva Moya, Ezequiel, La Garganta Poderosa, v. 7 members of the Argentine Naval Prefecture regarding ill-treatment and torture*").

17. The opening of the administrative inquiry led to the immediate suspension from active service of the seven members of the Prefecture implicated in said ill-treatment for a serious breach of the Code of Conduct for Law Enforcement Officials and the Code of Ethics for Public Officials.

18. At an extraordinary meeting held from 2 to 4 October 2016, it was decided to discharge the seven officers, none of whom now works for the Argentine Naval Prefecture.

19. Meanwhile, the Ministry of Security contacted the prosecutor's office acting in the court case, providing all relevant information to the judiciary about the facts that had occurred.

20. Criminal and Correctional Court No. 6 heard criminal case No. 5596 (computerized record No. 57976/2016) against Leandro Adolfo Antúnez and others for the concurrent offences of torture and robbery with aggravating circumstances, namely the use of firearms

[3] www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A_HRC_37_5_Add1_SP.docx.

and status as members of a security force (arts. 45, 55, 144 ter (1), 166 (2), second para., and 167 bis of the Criminal Code and article 312 of the Code of Criminal Procedure).

21. The members of the Argentine Naval Prefecture Orlando Ariel Benítez, Leandro Adolfo Antúnez, Osvaldo Alberto Ertel, Ramón Fernando Falcón, Eduardo Sandoval and Yamil Alejandro Marsilli were committed for trial and remanded in custody.

22. On 5 May 2017, the Fourth Chamber of the National Appeal Court for Criminal and Correctional Cases upheld the committal ordered at first instance and the legal characterization of the offence, rejecting an application for the dismissal of the case that had been filed by Orlando Benítez and an objection to the committal for trial that had been submitted by the defendants.

23. Accordingly, the case was committed for trial and randomly assigned to Oral Criminal and Correctional Court No. 9.

24. The Oral Court ruled that oral proceedings would commence on **11 May 2018**.

25. The Court also ruled that the hearings, at which it is likely to hear a large amount of evidence, will be held every Friday; it is estimated that the public and oral proceedings will conclude before the winter judicial recess (July/August 2018).

Paragraph 26. The Committee urges the State party to proceed with the formation of the National Committee for the Prevention of Torture and to ensure that its members are elected by means of a transparent and inclusive process, in accordance with the criteria for independence, gender balance, representativeness of the population, suitability and recognized capacity in various multidisciplinary areas, including the law and health care (see article 18 of the Optional Protocol and CAT/OP/12/5, paras. 17-20). To that end, the State party should refrain from appointing members who occupy positions that might give rise to conflicts of interest (CAT/OP/ARG/1, para. 16). The Committee also urges the State party to proceed with the process of setting up local mechanisms in conformity with the criteria set out above and to provide them with the necessary resources to carry out their functions.

Formation of the National Committee for the Prevention of Torture

26. As was reported in the aforementioned documents, the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was established under Act No. 26827, with the National Committee for the Prevention of Torture ("the National Committee") as its governing body.

27. The National Committee was formed on 27 December 2017.

28. A brief chronology of the actions taken by the standing congressional committee on the Ombudsman's Office in forming the National Committee is provided below.

29. On 18 May 2017, a list of the 22 candidates proposed by civil society organizations was published, thus initiating the period for the submission of comments and challenges in respect of the nominations. Sixteen nominees were then selected to be evaluated in a public hearing before the standing congressional committee on the Ombudsman's Office, held on 29 June 2018.

30. On 23 August 2017, the congressional committee decided, by a majority opinion, to appoint three candidates nominated by non-governmental organizations. That decision was endorsed by the Senate on the same day.

31. A candidate representing the National Secretariat for Human Rights and Cultural Pluralism was proposed on 28 September 2017 and two representatives of local mechanisms were appointed thereafter, in accordance with the allocation of posts set forth under article 11 of Act No. 26827.

32. Finally, on 28 December 2017, the Senate held a ceremony establishing the National Committee for the Prevention of Torture.

33. During the ceremony, certificates of membership of the National Committee, as approved by Congress, were awarded to the following individuals: María Josefina Ignacio,

Gustavo Federico Palmieri and Diego Lavado, nominated by civil society; Rocío Alconada Alfonsín, María Laura Leguizamón and Juan Manuel Irrazábal, nominated by the Senate; Diana Conti, Jorge D'Agostino and Alex Ziegler, nominated by the Chamber of Deputies; and Alberto José Lucchetti, nominated by the National Secretariat for Human Rights and Cultural Pluralism. A certificate was also awarded to Francisco Mugnolo, who serves on the Committee in his capacity as the incumbent Prison System Ombudsman. The representatives of local mechanisms, Silvina Canteros and Enrique Font, were also present.

34. Following the investiture of its members, the National Committee held its first meeting, at which Dr. Jorge D'Agostino was elected as its first chair.

Progress in the process of setting up local torture prevention mechanisms

35. The National Secretariat for Human Rights and Cultural Pluralism continues to take steps towards the setting up of local torture prevention mechanisms in provinces that do not yet have them, while striving, in the outstanding cases, to bring provincial laws into full conformity with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

36. Local mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment have been set up in the provinces of Salta, Misiones, Chaco, Corrientes, Mendoza, Río Negro, Tucumán and Entre Ríos and in the Autonomous City of Buenos Aires.

37. Promoting the creation of local mechanisms in the remaining jurisdictions and strengthening existing mechanisms are a key point on the 2018 agenda of work of the National Secretariat for Human Rights and Cultural Pluralism.

Paragraph 32. The Committee reiterates its previous recommendation (see CAT/C/CR/33/1, para. 7 (e)) and urges the State party to establish an effective system for collecting statistical data at the national level, which should include information about complaints, investigations, prosecutions, trials and convictions in cases of torture or ill-treatment and also about the measures of redress, particularly compensation and rehabilitation, provided for victims. In setting up such a system, the State party should take advantage of the data collection and case registration work done by other bodies, such as the Prison System Ombudsman, the Buenos Aires Provincial Memory Commission and the Gino Germani Institute of Buenos Aires University.

National register of cases of torture

38. As stated previously, the National Committee for the Prevention of Torture was formed on 28 December 2017.

39. Article 7 (e) of Act No. 26827, establishing the National System for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, stipulates that the functions of the National Committee include the creation, implementation and coordination of a national register of cases of torture or other cruel, inhuman or degrading treatment or punishment and a national register of habeas corpus proceedings for deterioration in the conditions of detention.

40. Similarly, article 7 (c) stipulates that the National Committee is also responsible for collecting and recording information from the entire National System and from any other source that it considers relevant on the situation of persons deprived of their liberty in the territory of Argentina, managing its databases as it deems necessary.

41. To perform these functions the National Committee has the power, among others, to request data, information and documents from the persons responsible for public or private detention centres, from any other national, provincial and/or municipal public authorities, and from the judiciary and the Public Legal Service at the national and provincial (including the Autonomous City of Buenos Aires) levels, as stipulated under article 8 (a).

42. Moreover, Decree No. 465/2014 establishes, in the regulation on article 8 of Act No. 26827, that information requests issued by the National Committee cannot be rejected

without reason and that the receiving public or private authorities are obliged to provide the requested information within the set time frame. The Decree also requires the National Committee to have unrestricted access to information, without the need to explain or to substantiate its request.

Bill on a unified register of detainees

43. In the aforementioned supplementary information submitted on 9 May 2017, the Government indicated that it had embarked on an inter-institutional process, coordinated by the congressional committee on human rights to draft a bill for the development and launch of a unified register of detainees.

44. The Chamber of Deputies presented the bill, which is currently being reviewed by the parliament as file No. 1927-D-2017 and parliamentary procedure No. 33.

45. The bill provides for the creation of a unified information system on persons deprived of their liberty, consisting of a database and a statistical register of persons deprived of their liberty, to be maintained by the Supreme Court of Justice and the Ministry of Justice and Human Rights, respectively, as the two authorities responsible for producing and processing data on persons deprived of their liberty. The system would cover the entire territory of Argentina under the jurisdiction of the national and federal judicial system.

46. The bill may be consulted via the following link:

http://www.hcdn.gob.ar/proyectos/textoCompleto.jsp?exp=1927-D-017&tipo=LEY.

Open data portal

47. The Ministry of Justice and Human has promoted several reforms, in the context of the Justice 2020 Programme, that are relevant to the Committee's recommendation.

48. The open data portal of the Argentine justice system was created as part of a digitization process designed to increase openness, ensure transparency, generate better public policies and facilitate monitoring of the Argentine justice system using accurate data and indicators published on the online platform http://datos.jus.gob.ar/.

49. This new data system is a tool, coordinated by the Ministry of Justice and Human Rights, that collects up-to-date information from 51 justice institutions throughout the country for the publication of judicial statistics in open and reusable formats. The signatory institutions agreed on the data that were to make up these statistics and developed data protocols and processes to organize work and standardize criteria.

50. To facilitate the search for information, the online platform is split into thematic sections, including those on access to justice, transparency and anti-corruption, human rights, gender, legal information, the judiciary, crime policy and the prison system.

51. The section on resources relating to the justice system contains annual statistical information on prisons, prepared by the Office of the Under-Secretary for Crime Policy of the Ministry of Justice and Human Rights using the reports of the National Statistical System on the Execution of Sentences.

52. The National Statistical System on the Execution of Sentences is effectively a prison census that is conducted on 31 December each year in respect of the country's 290 criminal detention units in the federal and provincial systems. It produces the official statistics on prisons.

53. The 2016 report of the National Statistical System on the Execution of Sentences[4] contained a number of important findings, including that the number of convicted offenders had overtaken the number of pretrial detainees for the first time in the history of Argentina.

[4] http://www.jus.gob.ar/media/3268598/Informe%20ejecutivo%20del%20Sneep%202016-Sistema%20Nacional%20de%20Estad%C3%ADsticas%20sobre%20Ejecuci%C3%B3n%20de%20la%20Pena.pdf.

54. The data portal also contains a compilation of statistical data on institutional violence, prepared by the National Directorate of Policies to Combat Institutional Violence of the National Secretariat for Human Rights and Cultural Pluralism, which has been published annually since 2016.

55. This data is drawn from the monitoring of incidents of institutional violence based on submissions, complaints and information received by the National Directorate, and is set out in detail on the page entitled "Recording, processing and monitoring acts of institutional violence".

56. Successive updates of this data — the latest of which is dated March 2018 — can be accessed via the link: http://datos.jus.gob.ar/dataset/unidad-de-registro-sistematizacion-y-seguimiento-de-hechos-de-violencia-institucional.

Measures of redress for victims

57. One significant advance in the implementation of measures of redress for victims was the launch of the Centre for the Assistance of Crime Victims, which reports to the Ministry of Justice and Human Rights, in the framework of Act No. 27372 on the Rights and Guarantees of Crime Victims. Its aim is to provide immediate assistance, support and comprehensive counselling to victims of crime throughout the country.

58. The Centre is responsible for assisting the victims of federal crimes anywhere in the country and may also assist, in a contributory capacity at the request of local jurisdictions, the victims of ordinary crimes. Its main objective is to provide support and guidance for crime victims.

59. Care for victims is provided through the National Directorate for the Assistance of Victims and its programmes and through the access to justice centres that are located in all the provinces.

60. The Centre has plans to sign cooperation agreements with local institutions for the care of victims with a view to fulfilling its obligations at the provincial level, and to undertake joint work with the Public Defence Service.

61. The implementing regulations of Act No. 27372 on the Rights and Guarantees of Victims were recently adopted under Decree No. 421/2018 of 8 May 2018.